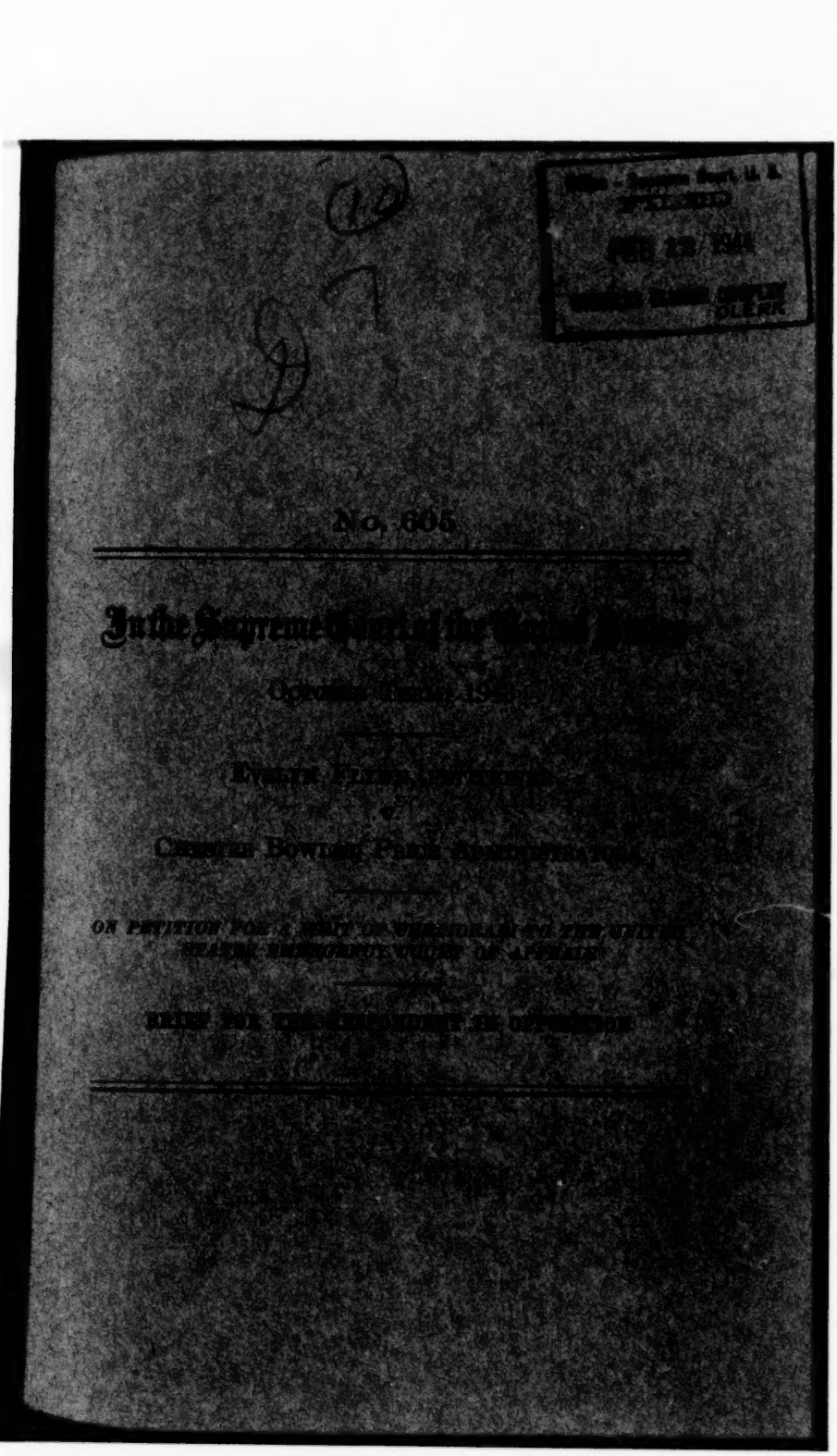

No. 605

In the Supreme Court of the United States

October Term, 1943

EVERETT FIELD, Petitioner,

v.

CHESTER BOWLES, Price Administrator, et al.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS

BRIEF FOR THE RESPONDENTS IN OPPOSITION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statute and regulations involved	2
Statement	2
Argument	7
Conclusion	10
Appendix	11

CITATIONS

Cases:	
Bogart Packing Company, Inc. v. *Brown*, 138 F. (2d) 422	9
Frank v. *Henderson*, 133 F. (2d) 207, certiorari denied, 318 U. S. 772	9
Safeway Stores, Inc. v. *Brown*, 138 F. (2d) 278, certiorari denied, No. 481, present Term	8
Taylor v. *Bowles* (U. S. E. C. A.)	10
Statute:	
Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended, c. 578, 56 Stat. 765, 767 (50 U. S. C. App., Supp. II, 901 et seq.):	
Section 203 (a)	7, 11
Section 204 (a)	12
Regulations:	
Maximum Rent Regulation No. 28, redesignated the Rent Regulation for Housing, 8 F. R. 7322:	
Section 5 (b) (2)	3, 13
Section 5 (d)	14
Revised Procedural Regulation No. 3, 8 F. R. 526, 1798, 3534, 5481:	
Section 1300.207	3, 15
Section 1300.209	3, 15
Section 1300.210	16
Section 1300.215	3, 17

572817—44——1

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 605

EVELYN FLYNN, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The United States Emergency Court of Appeals rendered no opinion; its judgment appears at R. 52 and R. 56–57.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on December 2, 1943, and amended on December 15, 1943 (R. 52, 56–57). The petition for a writ of certiorari was filed on January 14, 1944. Jurisdiction of this Court is invoked under Section 204 (d) of the

Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 765 (sometimes referred to herein as "the Act").

QUESTIONS PRESENTED

Whether petitioner's complaint in the Emergency Court of Appeals was properly dismissed by that court without consideration of the merits of the objections asserted in the complaint to the order of the Acting Area Rent Director and to the provisions of the Maximum Rent Regulation.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, of Maximum Rent Regulation No. 28, and of Revised Procedural Regulation No. 3 are set forth in the Appendix, *infra*, pages 11–17.

STATEMENT

On June 30, 1942, the Price Administrator issued Maximum Rent Regulation No. 28, effective July 1, 1942, establishing maximum rents for housing accommodations other than hotels and rooming houses in the San Francisco Bay Defense-Rental Area.[1] Petitioner, on April 2, 1943, filed in the San Francisco Defense-Rental Area Office of the Office of Price Administration a petition for permission to withdraw her furniture

[1] Redesignated the Rent Regulation for Housing, 8 F. R. 7322.

and furnishings from the housing accommodations located at 530 Larkin Street, San Francisco, California (R. 12–15). This petition was considered by the Acting Area Rent Director as a petition filed pursuant to Section 5 (b) (2) of the Regulation, *infra*, pp. 13–14. On September 14, 1943, the Acting Rent Director of the Area Office issued an order denying the petition (R. 15–16).

The administrative procedure with respect to rent petitions and protests is set forth in Revised Procedural Regulation No. 3.[2] Section 1300.209 (a) of that Regulation, *infra*, pp. 15–16, provides that any landlord whose petition for adjustment or other relief has been denied in whole or in part may file an application for review of such determination by the appropriate Regional Office. Any landlord whose application for review is denied by the Regional Administrator in whole or in part may, pursuant to Section 1300.215 of the Procedural Regulation, file a protest with the Price Administrator. Sections 1300.209 and 1300.215 of the Procedural Regulation establish certain exceptions to the provisions for filing applications for review; under these sections, any landlord subject to an order determining a disputed, doubtful or unknown fact necessary to the establishment of a maximum rent, or to an order entered by the Area Rent Director on his own initiative under Section 1300.207 of Revised Procedural Regula-

[2] 8 F. R. 526, 1798, 3534, 5481.

tion No. 3, may file a protest against such order directly with the Price Administrator.

Although the order denying her petition did not fall within either of these exceptions, petitioner on September 17, 1943, filed with the Price Administrator a document entitled "Protest of Evelyn Flynn" in which she sought to have the Acting Rent Director's order of denial reviewed on the merits (R. 16–20). On September 27, 1943, before any action on the "protest" had been taken by the Administrator pursuant to Section 203 (a) of the Emergency Price Control Act, petitioner filed a complaint in the Emergency Court of Appeals (R. 1–9) alleging that her "Protest was denied by an order of the Office of Price Administration dated September 14, 1943, by which Complainant's Petition No. 30,482, Reg. VIII, was denied" (R. 2). The gravamen of the complaint was that the Acting Rent Director was in error in denying the original petition and that the Emergency Price Control Act and Maximum Rent Regulation No. 28 are invalid.

Subsequently, on October 9, 1943, an order was issued by the Administrator dismissing the protest and ordering it to be docketed as an application for review of the Acting Area Rent Director's order in the Regional Office of the Office of Price Administration for Region VIII (R. 20–21). The Administrator's order was accompanied by an opinion stating, as the grounds for dismissing the

protest, that the petitioner had failed to file an application for review of the order denying her petition and that petitioner was therefore not subject to an order against which a protest might be filed under Revised Procedural Regulation No. 3 (R. 21–23).

Respondent, on October 11, 1943, filed a motion to dismiss petitioner's complaint on the ground that it was jurisdictionally defective in that it did not allege or show that there had been a denial or partial denial of a protest filed by petitioner (R. 10–12). To cure this defect, petitioner on October 29, 1943, filed a motion for leave to amend her complaint by the addition of an allegation that her protest had been dismissed by the Administrator on October 9, 1943 (R. 30–31). On November 6, 1943, the Court denied respondent's motion to dismiss and granted petitioner's motion to amend her complaint, without prejudice to the right of respondent to move to dismiss the amended complaint upon "any grounds which he may deem appropriate, including grounds asserted in his motion filed October 11, 1943" (R. 37).

On November 18, 1943, respondent filed a motion, together with a supporting memorandum, to dismiss the amended complaint on the following grounds (R. 39–43):

(1) That the Administrator had properly dismissed petitioner's protest as a protest against the Acting Area Rent Director's order and or-

dered it redocketed as an application for review by the Regional Administrator;

(2) That since the Administrator, in dismissing the protest as a protest against the Acting Area Rent Director's order of denial, did not purport to review that order on the merits, the correctness of the denial was not properly before the Emergency Court of Appeals;[3]

(3) That since the protest filed by petitioner did not purport to be a protest against Maximum Rent Regulation No. 28, the Administrator had not so treated it, and therefore the validity of the rent regulation was not properly raised in the Emergency Court of Appeals; and

(4) That in any event, the protest, as a protest against the rent regulation, was not filed within the time specified in Section 203 (a) of the Act.

On December 2, 1943, the Emergency Court of Appeals entered a judgment dismissing petitioner's amended complaint (R. 52). A petition for rehearing filed by petitioner on December 13, 1943 (R. 53–56) was dismissed by an order of the Court dated December 15, 1943, which also amended the judgment in certain formal respects (R. 56–57).

---

[3] Respondent stated in his motion papers that petitioner's application for review had been denied on November 17, 1943, and that petitioner might file an appropriate protest against this denial on the merits.

ARGUMENT

The only question properly presented by the petition for certiorari is whether the Emergency Court of Appeals correctly dismissed petitioner's complaint without consideration of the merits of the objections asserted therein against the Acting Area Rent Director's order and the Maximum Rent Regulation. We submit that the dismissal of the complaint without consideration of those objections was clearly correct because they had not been properly presented to, or considered by, the Price Administrator in protest proceedings in accordance with the provisions of Section 203 (a) of the Act.

In the complaint, petitioner sought to raise objections to the validity of the Acting Area Rent Director's order before exhausting her administrative remedies. Revised Procedural Regulation No. 3, governing the filing of petitions and protests with respect to rent regulations and orders, provides that orders of an area rent director, except in certain instances not relevant here,[5] are subject to review through the filing of an application for review with the Regional Administrator, and upon the denial of such an application, subject to further review through the filing of a protest with the Price Administrator. Because petitioner had not filed an application for review

[5] See pages 3–4, *supra*.

with the Regional Administrator but had filed her protest directly with the Price Administrator, the Administrator dismissed the protest and ordered that it be docketed with the Regional Administrator as an application for review of the Acting Area Rent Director's order. In her complaint, petitioner did not question the correctness of this dismissal and redocketing with the Regional Administrator, but instead continued to urge her substantive objections to the validity of the Acting Area Rent Director's order denying her petition. In dismissing the complaint, the court below merely decided that it could not properly consider the merits of those objections which had not been passed upon by the Price Administrator in a protest proceeding. This decision was compelled by the language of the Act and was in accordance with the previous decision of the court in *Safeway Stores, Inc.*, v. *Brown*, 138 F. (2d) 278 (E. C. A. 1943), certiorari denied, No. 481, present Term.

Similarly, objections to the validity of Maximum Rent Regulation No. 28 were not properly raised in the protest or in the amended complaint, and were not passed upon by either the Administrator or the Emergency Court of Appeals. The protest was treated by the Administrator as a protest solely against the order of the Acting Area Rent Director. The effect of the court's decision dismissing the complaint was to uphold the Administrator's determination that the document

filed by petitioner was not a proper protest against the Regulation and need not be docketed as such. The correctness of this decision is apparent from a reading of the protest. The vague contentions made in the protest with respect to the validity of the Act and the Regulation clearly failed to conform to the specific requirements contained in the Act. *Frank* v. *Henderson,* 133 F. (2d) 207 (U. S. E. C. A. 1942), certiorari denied, 318 U. S. 772; *Bogart Packing Company, Inc.* v. *Brown,* 138 F. (2d) 422 (E. C. A. 1943). In addition, even if the protest had properly set forth these objections, it was not filed within the sixty-day period specified by the Act. The Regulation was issued on June 27, 1942, and the protest was not filed until September 17, 1943, almost fifteen months later. Nor was there anything in the protest to suggest that, as a protest against the Regulation, it purported to be based upon grounds arising more than sixty days after the issuance of the Regulation. Cf. *Bogart Packing Company, Inc.* v. *Brown, supra.*

Petitioner's charge that the respondent has attempted to handicap or delay petitioner in obtaining judicial review of the Administrator's action in the Emergency Court of Appeals is entirely without justification. The Regional Administrator passed upon the application for review of the Acting Area Rent Director's order within six weeks of the dismissal of the petitioner's protest

and its redocketing with the Regional Office as an application for review. As respondent suggested in motion papers which were filed with the court below, the petitioner was then in a position to file with the Price Administrator a protest which would have provided a proper basis for review of the order in the Emergency Court of Appeals in the event that the protest was denied by the Administrator.[6] Any further delays or handicaps which petitioner has experienced in these proceedings have been due to her own insistence upon ignoring the provisions of the applicable procedural regulation and upon following a path different from that clearly outlined for her guidance.

CONCLUSION

The decision below is correct and does not warrant further review. The petition should therefore be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

RICHARD H. FIELD,
Acting General Counsel,
Office of Price Administration.

FEBRUARY 1944.

---

[6] Petitioner has referred in her brief to a companion case (No. 81) entitled *Taylor* v. *Bowles*, now pending before the Emergency Court of Appeals (Pet. Br. 24–25). That case involves the same housing accommodations and raises the question of the landlord's right to evict his tenants. The *Taylor* case is properly before the Emergency Court of Appeals on the merits of the issues involved.